

AN ORDINANCE

BY CITY UTILITIES COMMITTEE

01- 0 -0238

AN ORDINANCE TO REPEAL SUBSECTION (b) OF SECTION 130-82 OF THE ATLANTA CITY CODE EXEMPTING CITIZENS WITH AN ANNUAL INCOME OF LESS THAN \$8,000 FROM THE \$30 FEE PER YEAR FOR SOLID WASTE RECYCLING SERVICES AND FOR OTHER PURPOSES.

WHEREAS, Subsection (b) of City Code Section 130-82 exempts citizens with an annual income of less than \$8,000 from the \$30 fee per year for solid waste recycling services; and

WHEREAS, solid waste recycling service fees are fees for which services are rendered by the City of Atlanta; and

WHEREAS, the City Law Department has repeatedly advised over the years that the waiver of fees for services constitutes a gratuity in violation of Article 3, Section 6, Paragraph 6 of the Constitution of the State of Georgia,

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS AS FOLLOWS:

Subsection (b) of Section 130-82 of the Atlanta City Code, exempting citizens with an annual income of less than \$8,000 from the \$30 fee per year for solid waste recycling services, is hereby repealed.

Sec. 130-80. Charges for disposal of solid waste at city facilities.

(a) *Established.* Any person disposing of solid waste at one of the city's solid waste disposal facilities, except those specifically exempt by section 130-57, will be charged a fee for disposal of solid waste.

(b) *Determination of amounts.* The charge established in subsection (a) of this section shall be determined annually by the commissioner based on the current costs of disposal of solid waste. The schedule of charges for disposal of solid waste shall be filed with the municipal clerk by the commissioner not later than two weeks following adoption of the annual budget. A schedule of these charges will also be posted at the city disposal facilities and shall be made effective January 1 of each year.

(Code 1977, § 9-6124)

Sec. 130-81. Reserved.**Sec. 130-82. Fees for recycling.**

(a) A fee of \$30.00 per year is established for the provision of recycling services for each single-family residence and for each unit of duplex, triplex and quadruplex residences.

(b) All citizens who have less than \$8,000.00 of income per year are exempted from this fee.
(Code 1977, § 9-7001(V))

Sec. 130-83. Billing and collection.

(a) *Sanitary service charge.* The assessment and collection of sanitary service charges as set forth in this division shall be made by the city. The assessment and collection of annual charges shall be made quarterly with the first installment due and payable on January 1. The first installment shall be based on charges established for the previous year. If the charges are revised as provided for in this division, the remaining installments will be revised to reflect the revised annual rate.

(b) *Commercial and industrial surcharge.*

(1) The assessment and collection of commercial and industrial surcharges as set forth

in this division shall be made by the city. The assessment and collection of annual charges shall be made quarterly with the first installment due and payable on January 1. The first installment shall be based on charges established for the previous year. If the charges are revised as provided for in this division, the remaining installments will be revised to reflect the revised annual rate.

- (2) The tenant occupying or the owner of the commercial and industrial property, as the case may be, shall submit to the city on forms furnished by the city an estimate of the volume of solid waste, either bags or industrial containers with cubic yard sizes, required to be removed during a one-week period and an estimate of the number of collections per week required to remove that waste. The estimates shall be submitted to the city at least 1½ months prior to the quarterly billing period. The quarterly surcharge shall be based on the estimate so furnished.
- (3) At any one time during any calendar quarter, if a revised estimate is received by the city on a date which is at least 17 days before the end of the quarter, each industrial and commercial occupant or owner shall have the right to revise the estimate previously submitted to the city so as to amend, modify or change the estimate as to the type of service, the number of pickups per week or the volume of service per pickup.
- (4) Solid waste collection service by the city may be instituted at any time during the calendar quarter upon the industrial and commercial occupant or owner submitting to the commissioner of public works the estimate as provided in this subsection and a requested date of the commencement of the service.
- (5) Upon the cessation of any industrial or commercial business, by written notice, any industrial and commercial occupant or owner may discontinue solid waste collection service by the city upon giving



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CLIFFORD E. HARDWICK, IV
CITY ATTORNEY

April 10, 1997

The Honorable Clair Muller
Atlanta City Council, District 8
55 Trinity Avenue, S.W.
Atlanta, Georgia 30335

Re: Whether the City can provide garbage pick-up services, and impose charges for such services not equal to the benefits received

Dear Clair:

This is in response to your request for an opinion on the validity of legislation which would impose a schedule of charges for garbage pick-up services by which some citizens would pay no charges, or reduced charges, regardless of the amount of services provided. I understand that the Council is considering two pieces of legislation, 96-O-1365, which would direct the development of volume- or incentive-based billing for garbage pick-up, and 95-O-1864, which would retain the present property frontage basis of billing for single-family residences, and billing by dwelling unit or container for multi-family residences, trailer parks, and the like, but would exempt persons over 65 years of age from all or part of the bills, on a basis determined by income. It is my opinion that while the City has wide discretion for determining the way in which it provides services to its citizens, if it establishes different charges based on differences in service, the differential must have some reasonable relation to the amount of difference in service or its rates may be invalidated for having produced an unjust discrimination.

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Any discussion of limitations on the City's ability to set rates for services must begin by acknowledging the legal principle that where municipalities have the charter power to do a particular act in a discretionary manner or way, the courts will not control the manner or way in which it acts unless the municipality manifestly abuses its discretion. *Macon Ambulance Service, Inc. v. Snow Properties, Inc.*, 217 Ga. 262, 127 S.E.2d 598 (1962). The City of Atlanta's ability to provide garbage pick-up services, and to charge fees for these services, is one of the enumerated powers granted by its charter:

To levy, fix, assess, and collect a garbage, refuse, and trash collection and disposal and other sanitary service charge, tax, or fee for such services as may be necessary in the operation of the city from all individuals, firms, and corporations residing in or doing business therein benefiting from such services . . .

1996 City Charter, Section 1-102(c)(26). An additional source of authority for this activity is the Georgia Revenue Bond Law, which authorizes municipalities and other governmental bodies "to prescribe, revise, and collect rates, fees, tolls or charges for the services, facilities, or commodities furnished or made available by" operations connected with "the collection, treatment, reuse, or disposal of solid waste." O.C.G.A. Sections 36-82-61(4)(C)(iii) and -62(a)(3). Georgia municipalities have also been held to have the authority to charge differential rates for services, for example, for water service. *See, e.g., Zepp v. Mayor & Council of City of Athens*, 225 Ga. 449, 339 S.E.2d 576 (1986).

It is important, however, to examine closely the reasoning behind the Georgia appellate rulings, such as *Zepp*, which validate differential charges. In *Zepp*, the Georgia Supreme Court was asked to strike down the City of Athens' higher charges for water services to customers located outside its jurisdictional limits. When it declined to do so (*see, also*, the subsequent Georgia Court of Appeals ruling at 180 Ga.App. 72, 348 S.E.2d

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673 (1986)), the Supreme Court noted that its decision was premised on the fact that water service outside the jurisdictional limits was based solely on a voluntary contract with the City of Athens, thereby confining the Court's review of the rights of the grievants to their status as participants in a voluntary arrangement, rather than as citizens denied equal protection or due process.

In contrast to that factual situation, the provision of garbage pick-up services within the City of Atlanta is neither voluntary nor contractual in nature. The City of Atlanta charges residences within its jurisdictional limits for pick-up service, regardless of the extent to which the owners of such residences actually avail themselves of the service. *City of Atlanta Code of Ordinances, Section 130-81*. This brings your present issue closer to the facts of *Jarrett v. City of Boston*, 209 Ga. 530, 74 S.E.2d 549 (1953), in which a schedule of water rates was challenged that imposed fixed monthly rates on customers without water meters, while customers with meters were charged by the amount of water used. The Georgia Supreme Court weighed the equity of this schedule of charges according to the following principle:

A difference in conditions of service justifies a difference in charge; but when a difference in charge is based on a difference in service, it must have some reasonable relation to the amount of difference, and cannot be so great as to produce an unjust discrimination.

Jarrett, 209 Ga. at 531, 74 S.E.2d at 551. Unless the City of Atlanta can demonstrate a "reasonable relationship" between the various levels of garbage pick-up fees established by the Council "to the amount of difference" in service offered, its schedule of rates could be invalidated when measured against the principle articulated in *Jarrett*.

The vulnerability to legal challenge of any set of charges would be determined, not by the existence of different rates or by the existence of exemptions, but by whether, having chosen to set charges according to

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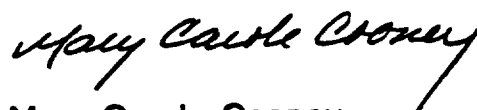
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some measurement of service, the Council makes exceptions to those charges that have no relationship to the services forming the basis for its schedule of charges. Measured against both the present property frontage basis for billing, and volume- or incentive-based billing, the proposal to grant age- and income-based exemptions (which have no demonstrable relationship to property size or volume of solid waste picked up) will not, in my opinion, justify the difference between the rates or total exemptions offered to senior citizens and the rates charged to other persons who may be younger than 65 years of age, but also have low incomes, and who may generate minimal solid waste or reside on smaller parcels of property.

Offering low-income discounts to senior citizens only, within a rate schedule premised on property frontage or volume of solid waste, would make the entire schedule of rates unlikely to withstand challenge on either an equal protection or unjust discrimination basis.

I hope that this has been responsive to your request. Please let me know if I may be of further assistance,

Very truly yours,



Mary Carole Cooney
Deputy City Attorney

cc: Clifford E. Hardwick, IV
City Attorney

Joe M. Harris
Deputy City Attorney

O. V. Brantley
Deputy City Attorney